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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/796,305	02/07/1997	MARGARET KILIBWA	CULTOR-102US	8781

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/03/2001

34

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
08/796,305

Applicant(s)
Kilibwa

Examiner
Lien Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov. 19, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-63 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other:

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1. The 112 first paragraph and second paragraph rejections are hereby withdrawn.
2. Claims 30-31, 36, 48-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Dartey et al for the same reason set forth in paragraph 3 of paper no. 18.
3. Claims 30-32, 34, 39-41, 43, 48-49, 51-52 and 56-59 are rejected under 35 U.S.C. 102(b) as being anticipated by Engelbrecht et al for the same reason set forth in paragraph 4 of paper no. 18.
4. Claims 37-38, 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dartey et al in view of the textbook "The Encyclopedia of Chemical Technology" for the same reason set forth in paragraph 5 of paper no. 18.
5. Claims 33, 35, 37-38, 42, 45-47, 53-55 and 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over EngelBrecht et al in view of the textbook "Encyclopedia of Chemical Technology" for the same reason set forth in paragraph 6 of paper no. 18.
6. Claims 44 and 60 are allowable over the prior art for the same reason set forth in paragraph 7 of paper no. 18.
7. In the response filed Nov. 19, 2001, applicant argues the prior art discloses a range which touches the claimed range, but no specific examples falling within the claimed range are disclosed. Applicant states the disclosure of a range endpoint with no specific exemplification of embodiment with polydextrose amounts near the lower end of the range does not amount to the sufficient specificity required for anticipation. This argument is not persuasive. As long as the broad generic teaching of the reference discloses an amount which falls within the range claimed,

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then the reference anticipates the claims. It is not needed that the amount has to be specifically exemplified in the examples. The examiner is not aware of any law that requires the patent to recite every feature disclosed in specific examples. Applicant further argues that a composition with a high flour content and a low polydextrose content would not achieve the desired level of caloric reduction according to Dartey et al. Dartey et al teach the broad ranges of ingredients; the selection of any amount within the range taught is within the teaching of Dartey et al.

Furthermore, Dartey et al not only disclose the range but they also claim the range as shown in claim 1. Thus, it is abundantly clear that an amount of polydextrose within the claimed range of 1-10% is disclosed and claimed by Dartey et al. Also, Dartey et al teach that the reduction in calorie is not only obtained by the use of polydextrose but also by using cellulosic bulking agent and lowering the shortening contents. The amount of shortening used can be from 0-10%. Thus, if a high amount of flour is used, it is obvious other variables such as the shortening contents and the amount of cellulosic bulking agent is adjusted to obtain the desired calorie reduction.

Applicant can not dispute the fact that the amount of polydextrose disclosed by Dartey et al can fall within the claimed range when the reference explicitly discloses and claims such amount.

Applicant makes reference to the disclosure on column 3 lines 53-62; the disclosure on these lines is a discussion of the prior art and not the disclosure of the Dartey et al invention. Applicant refers to the examples disclosed in Dartey et al to show that the amounts of polydextrose used exceed the claimed amount. The examples are only certain embodiments of the reference and it is not the only teaching of the reference.

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With respect to the Engelbrecht et al reference, applicant argues the passing reference in Engelbrecht to the use of polydextrose as a fiber material without specific exemplification does not render the present claims unpatentable. This argument is not persuasive. Engelbrecht et al specifically disclose polydextrose; thus, the reference meets the claimed limitation. The examiner is not aware of any requirement that a patent has to have examples of all the materials that it discloses. As long as the material is disclosed, it meets the claimed limitation. The specific material does not have to be recited in examples to meet the claimed limitation. Applicant's attention is directed to column 3 lines 55-58 where polydextrose is disclosed.

With respect to the declaration filed Nov. 19, 2001, it is not found to be persuasive for the following reasons. In paragraph 2, the declaration states a typical recipe, based on Dartey's teachings, with the maximum amount of 10% of cellulosic bulking agent will exhibit only a 5% calorie reduction. This statement is not supported by factual evidence and the composition of this typical recipe is not known. Dartey et al teach ranges of ingredients to be used and the typical recipe that the declaration is referring to is unknown because the declaration does not disclose this typical recipe. The statement made in paragraph 3 is also not supported by factual evidence. There is no showing of the composition to arrive at the conclusion of a calorie reduction of only about 10%. In paragraph 6, the declaration shows a typical recipe and states that crackers produced from such recipe would have a caloric content of about 3.61-3.68 which is outside the range desired by Dartey et al. The recipe contains 10% by weight of combination of one or more fat. Dartey et al teach that the reduction in calorie is not only obtained by the use of polydextrose


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but also by using cellulosic bulking agent and lowering the shortening contents. The amount of shortening used can be from 0-10%. Thus, if a high amount of flour is used, it is obvious other variables such as the shortening contents and the amount of cellulosic bulking agent is adjusted to obtain the desired calorie reduction. The declaration can not dispute the fact that the amount of polydextrose disclosed by Dartey et al can fall within the claimed range when the reference explicitly discloses and claims such amount. Furthermore, the declaration does not show how the calorie content is calculated. The statement made in paragraph 13 is not supported by factual evidence. The recipe exemplified in paragraph 6 does not represent the totality of the Dartey et al teaching. It is not known how the conclusion that the polydextrose has to be increased by an additional 13.8 grams to a total of 20.6 gram while the flour content much be reduced by the same amount is reached. It is not known how the percent of polydextrose is calculated and what composition it is based on. The declaration gives conclusion without showing how such conclusion is reached.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

November 30, 2001


LIEN TRAN
PRIMARY EXAMINER
